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Dated: January 24, 2010 Signature: / Thomas W. Humphrey /
(Thomas W. Humphrey)

Docket No.: LF 217
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Letters Patent of:
Frank M. Fago et al.

Patent No.: 7,621,892 Issued: November 24, 2009

US Serial No. 10/750,427 Filed: December 31, 2003

For: Contrast Container Holder and Method to Fill
Syringes

PETITION TO CORRECT PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d)

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

In response to the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. §154(b) indicated on the Issue Notification dated November 11, 2009, Patentee herein respectfully requests reconsideration of the adjustment of patent term for the above referenced U.S. patent under 37 CFR §§ 1.181 and 1.705(d).

The Determination of Patent Term Adjustment indicates that the Patent Term Adjustment (PTA) is 425 days. However, this Determination is in error in view of Wyeth v. Kappos, No. 2009-1120 (Fed. Cir. Jan. 7, 2010).

Statement of Facts

1. The correct PTA is **669 days**. The bases under § 1.702 are: 1.702(a)(1) and 1.702(b).
2. The relevant dates as specified in 37 CFR §§ 1.703(a)-(e) are:
 - a. Under § 1.703(a)(1), Patentee is entitled to 470 days of adjustment for the PTO's failure to issue an action within 14 months of the application filing date of 02/28/2004. Specifically, the period of delay runs from

02/28/2005 through 6/13/2006. This period of delay occurred entirely prior to the date that is three years from the application filing date, namely prior to 12/31/2006. Under § 1.703(a)(2), Patentee is also entitled to 60 days of adjustment for the Examiner's failure to issue an action within four months of the submission of Patentee's response of 1/12/2007. Specifically, the period of delay runs from 5/12/2007 through 7/11/2007, or 60 days. This period of delay occurred after the date that is three years from the application filing date, namely after 12/31/2006.

- b. Under § 1.703(b), Patentee is entitled to 304 days of adjustment for the PTO's failure to issue the patent within three years of the application filing date of 12/31/2003. Specifically, the period of delay runs from 12/31/2006 through 11/24/2009. The period of exclusion set forth in § 1.703(b)(1) is applicable to the present patent and terminates this delay at 10/31/2007, so that the applicable period of delay runs from 12/31/2006 to 10/31/2007. Also, 60 days of the delay under § 1.703(a) occurred after the three-year date, i.e., after 12/31/2006, such that there is 60 days of overlap between the periods of delay, according to Wyeth. *Id.*, and thus Patentee is entitled to 304 – 60 or 244 additional days under § 1.703(b).
 - c. Sections 1.703(c)-(e) are inapplicable to the present patent.
 - d. Thus, the total PTA under 1.703 includes 470 plus 60 days under § 1.703(a) and 244 additional days under § 1.703(b), for a total PTA of 774 days.
- 3. The patent is not subject to a terminal disclaimer.
 - 4. There were circumstances the Patent Office has held to constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in § 1.704, leading to a determination of Applicant's Delay is 105 days.

In view of the facts set forth above, Patentee requests that the PTA Determination be corrected to **669 days**. Timely consideration of this petition is respectfully requested.

A petition fee is due in the amount of \$200.00 as set forth in 37 C.F.R. § 1.18(e). Payment is made on the attached Electronic Fee Sheet. If any additional fees are necessary, the Commissioner may consider this to be a request for such and is hereby authorized to charge any under-payment or fees associated with this communication, or to credit any over-payment, to Deposit Account No. 23-3000.

Dated: January 24, 2010

Respectfully submitted,

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